

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KARTER LANDON,

Petitioner-Appellant,

v

CITY OF FLINT,

Respondent-Appellee.

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UNPUBLISHED  
October 21, 2014

No. 316927  
Tax Tribunal  
LC No. 00-448503

Before: SAAD, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

In this tax dispute, petitioner appeals the Tax Tribunal's decision that upheld the special assessment district created by respondent to fund street lighting infrastructure. For the reasons stated below, we affirm.

**I. FACTS AND PROCEDURAL HISTORY**

Petitioner owns multiple properties in Flint. In 2012, Flint's emergency manager established a special assessment district to help pay for improvements to the street-lighting system in the city. The assessment was spread equally among all parcels in the city, for a total cost of \$66.05 per parcel.

Petitioner contested the special assessment on his properties, and initiated this suit before the Tax Tribunal.<sup>1</sup> He argued that the special assessment was unlawful because: (1) it did not raise the market value of his property and was not proportional to the value of the services provided; (2) it did not constitute an "improvement" as required by statute; and (3) it included a special assessment for garbage collection, despite the fact that it professed to only raise funds for streetlight maintenance. Respondent stated that: (1) petitioner failed to provide sufficient evidence to overcome the statutory presumption that special assessment districts are valid; (2)

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<sup>1</sup> The Tax Tribunal requires petitioners to pay a \$100 filing fee for each parcel that is involved in an appeal. Mich Admin Code, R 792.10267(3)(d). Though petitioner appeals the special assessment on multiple parcels, he only paid this \$100 fee for one parcel, and refused to pay the fee for the other parcels on which he sought to appeal the assessment.

the special assessment was consistent with the law; and (3) Flint's garbage disposal services were paid for by a fee imposed on landowners within the city, not the special assessment district, and petitioner offered no evidence to show otherwise.

The Tribunal agreed with respondent and dismissed petitioner's case. In a written opinion, it held that: (1) petitioner's case involved only one parcel, as he failed to pay the filing fee for the other parcels he owned, and thus did not invoke the Tribunal's jurisdiction over those parcels; (2) petitioner did not establish that the cost of the assessment was disproportionate to its benefit; (3) MCL 117.4d(1)(a) allowed the city to levy a special assessment to cover the operational and maintenance costs of street lighting; and (4) the garbage collection service was provided by a fee, not by the instant special assessment district.

Petitioner appealed the decision of the Tax Tribunal to our Court, and makes the same arguments on appeal as he did below.

## II. STANDARD OF REVIEW

In the absence of fraud, we review the Tribunal's decisions for legal errors. *Briggs Tax Serv, LLC v Detroit Pub Schs*, 485 Mich 69, 75; 780 NW2d 753 (2010). The Tribunal's factual findings will be conclusive if they are supported by competent, material, and substantial evidence on the record. *Klooster v Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011).

Matters of statutory interpretation are reviewed de novo. *Briggs Tax Serv*, 485 Mich at 75. When interpreting a statute, the court's goal is to "give effect to the intent of the Legislature." *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 628–629; 765 NW2d 31 (2009). Unless ambiguous, statutory language should be given its ordinary meaning and is presumed "to have intended the meaning expressed in the statute." *Id.* at 629.

## III. ANALYSIS

### A. VALIDITY OF THE SPECIAL ASSESSMENT

#### 1. MARKET VALUE

"Municipal decisions regarding special assessments are presumed to be valid and, generally, should be upheld absent a substantial or unreasonable disproportionality between the amount assessed and the value that accrues to the land as a result of the improvements." *Storm v City of Wyoming*, 208 Mich App 45, 46; 526 NW2d 605 (1994). To effectively challenge a special assessment, a taxpayer, "at a minimum, must present credible evidence to rebut the presumption that the assessments are valid. Without such evidence, the Tax Tribunal has no basis to strike down special assessments." *Id.*

Here, petitioner wrongly asserts that the special assessment district is invalid because it did not increase the market value of his properties. Mere recitation of the market values of petitioner's property is insufficient evidence to show the existence of a "substantial or unreasonable disproportionality between the amount assessed and the value that accrues to the land as a result of the improvements." *Storm*, 208 Mich App at 46. Moreover, despite petitioner's unsupported assertions to the contrary—petitioner has failed to show any connection

between declining property values in the city and the existence of the special assessment district to pay for street lighting infrastructure. Accordingly, petitioner failed to rebut the presumption of the special assessment's validity, and the Tribunal correctly rejected his claim.

## 2. "IMPROVEMENT"

The Home Rule City Act (HRCA), MCL 117.1 *et seq.*, authorizes home cities to assess and reassess "the costs, or a portion of the costs, of a public improvement to a special district." MCL 117.4d(1)(a).<sup>2</sup> The HRCA goes on to define "cost" in relevant part as the "operation and maintenance of a boulevard lighting system." MCL 117.4d(2)(b). And "boulevard lighting system" is defined as "any design or method of providing light to a street." MCL 117.4d(2)(a).

In general, an "improvement" to real property is a "permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs." *Pendzsu v Beazer East, Inc*, 219 Mich App 405, 410; 557 NW2d 127 (1996) (internal citation and quotation marks omitted). The determination of whether infrastructure qualifies as an improvement depends on whether the infrastructure increases "the value of the realty, for the purposes for which it was intended to be used." *Id.* at 411.

Here, petitioner incorrectly asserts that street-light infrastructure is not an "improvement."<sup>3</sup> Street lighting is manifestly an "improvement" to real property in that it is a "permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs."<sup>4</sup> *Pendzu*, 219 Mich App at 410.

## B. GARBAGE COLLECTION

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<sup>2</sup> MCL 117.4d(1)(b) notes that municipalities cannot "establish a special assessment district for a boulevard lighting system if the district includes the entire city, unless the special assessments against the real property within the district are levied on other than an ad valorem basis." But this restriction only applies to the "cost, or a portion of the costs, of *installing* a boulevard lighting system on a street upon the lands abutting the street." *Id.* (emphasis added). Thus, this restriction does not apply here because the instant special assessment district was formed to maintain, operate, and upgrade the existing lighting system.

<sup>3</sup> Petitioner's argument that the HRCA bars Flint from creating an assessment to pay for new lighting infrastructure is similarly without merit. The HRCA explicitly authorizes the city to "assess and reassess" the operational and maintenance costs of its street lighting infrastructure. The statute makes clear that "assessed" costs are made to cover new improvements, while "reassessed" costs are made to cover existing improvements.

<sup>4</sup> As noted, petitioner failed to show that the amount assessed to pay for the street lighting was disproportionate to the value of its benefit to affected properties, which means that he has failed to show the street lighting was not an "improvement."

Petitioner's claim involving the special assessment and Flint's garbage collection services is totally without merit. The Tribunal correctly held that it lacked jurisdiction to address this issue, because respondent's order on the special assessment district *expressly stated* it was being formed only for the purpose of paying for street lighting. The order did not address garbage collection costs, nor did the amount assessed per parcel actually reflect garbage collection costs. Because the special assessment district only included costs for the street lighting, and petitioner only appealed the formation of the special assessment district, he did not invoke the Tribunal's jurisdiction over the propriety of Flint's garbage collection and disposal services. See MCL 205.735a(5).

### C. FILING FEE

The Tax Tribunal is quasi-judicial, and its powers are "limited to those authorized by statute," which do not include equitable power. *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346, 359; 411 NW2d 169 (1987). It is obligated to comply with the laws and its promulgated rules when deciding cases. MCL 205.749(1) authorizes the Tribunal to set filing fee requirements by rule. TTR 267(3)(d) imposes a filing fee of \$100 to challenge a special assessment. Mich Admin Code, R 792.10267(3)(d). And a "petition shall not cover more than 1 assessed parcel of real property," unless an exception applies. Rule 792.10227(2).

Petitioner apparently believes the Tribunal's administrative rules do not apply to him, as he asserts that the Court should force the Tribunal to hear appeals as to *all* of his properties—not just the single property for which he paid the \$100 filing fee. This argument is unavailing. None of the Tribunal's exceptions apply to petitioner's property, as it is undisputed that the properties are not contiguous. By failing to comply with the Tribunal's rules, petitioner failed to timely invoke the Tribunal's jurisdiction to dispute the assessment as to those parcels, and the Tribunal correctly held that it lacked jurisdiction to hear appeals on his remaining properties.

Affirmed.

/s/ Henry William Saad  
/s/ Peter D. O'Connell  
/s/ Christopher M. Murray